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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE URIBE, Plaintiff - Appellant, v. AUTOZONE, INC., a Corporation, Defendant - Appellee.	No. 04-55323 D.C. No. CV-03-01635-RSWL MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Argued and Submitted November 18, 2005
Pasadena, California

Before: B. FLETCHER, SILVERMAN, and PAEZ, Circuit Judges.

Plaintiff Jose Uribe appeals the denial of his motion to remand and the grant of defendant Autozone's motions for judgment on the pleadings and summary judgment. Uribe filed a complaint against his former employer alleging, *inter alia*, state law claims of invasion of privacy and wrongful termination in violation of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

public policy after he was discharged for dating a subordinate. This action was originally filed in Superior Court for the County of Los Angeles, and was removed on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1441. We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part and reverse in part.

We review *de novo* an order denying a motion to remand for lack of jurisdiction. *United Computer Sys., Inc. v. AT&T Corp.*, 298 F.3d 756, 760 (9th Cir. 2002). In diversity cases where the amount in controversy is in dispute, a reviewing court may look beyond allegations in the complaint and consider other evidence relevant to the amount in controversy at the time of removal. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004). The district court properly relied upon a pre-removal settlement letter to conclude that the amount in controversy exceeded the jurisdictional minimum for diversity jurisdiction under 28 U.S.C. § 1332. *See Cohn v. PetSmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). The district court did not err in denying Uribe's motion to remand.

Judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is reviewed *de novo,* taking all material allegations of the nonmoving party as true, and construing the pleadings in the light most favorable to the nonmoving party. *Doyle v. Raleys, Inc.*, 158 F.3d 1012, 1014 (9th Cir. 1998). Uribe alleges in his complaint that Autozone violated his state constitutional right

to privacy when it investigated his relationship with a co-worker that Uribe alleges began after the co-worker was no longer his subordinate. Taking Uribe's allegation as true, we cannot conclude that such an investigation could never violate Uribe's right to privacy under ART. 1, § 1 of the California Constitution. Because this claim could not be resolved on the pleadings, the district court erred in granting judgment on the pleadings on Uribe's right of privacy claim.

Uribe also challenges the district court's Rule 12(c) ruling on his claim for intentional infliction of emotional distress. Because Uribe did not allege any facts that show outrageous conduct on the part of Autozone to support a claim for intentional infliction of emotional distress, the district court properly granted judgment on the pleadings on this claim.

Finally, we review *de novo* the district court's grant of summary judgment to Autozone on Uribe's state law wrongful termination claim. To support a claim for wrongful termination in violation of public policy, Uribe was required to demonstrate that his cause of action "inures to the benefit of the public." *See Barbee v. Household Automotive Finance Corp.*, 6 Cal. Rptr. 3d 406, 412 (Cal. Ct. App. 2003) (quoting *Stevenson v. Superior Court*, 16 Cal. 4th 880, 890 (1997)). Although Uribe argues that his right to privacy claim benefits the public, the state court of appeal rejected this argument in *Barbee*: "The fact that courts have

recognized that employers have legitimate interests in avoiding conflicts of interest [and] . . . reducing favoritism . . . strongly suggests that a supervisor has no reasonable expectation of privacy in pursuing an intimate relationship with a subordinate. Courts have also recognized that managerial-subordinate relationships present issues of potential sexual harassment." *Id.* at 411 (quotations and citations omitted). We agree that permitting Uribe's suit for wrongful termination to proceed would undermine, rather than inure to, the benefit of the public, and we therefore affirm the grant of summary judgment on Uribe's wrongful termination claim.

AFFIRMED in part, REVERSED in part and REMANDED.

Each side shall bear their own costs on appeal.